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## LOK SABHA

The following report of the Joint Committee on the Bill further to amend the Constitution of India was presented to Lok Sabha on the 25th March, 1964:—

### COMPOSITION OF THE JOINT COMMITTEE

LOK SABHA

Shri S. V. Krishnamoorthy Rao—*Chairman*

*Members*

2. Shri Bibhuti Mishra
3. Shri Sachindra Chaudhuri
4. Shri Surendranath Dwivedi
5. Shri A. K. Gopalan
6. Shri Kashi Ram Gupta
7. Shri Ansar Harvani
8. Shri Harish Chandra Heda
9. Shri Hem Raj
10. Shri Ajit Prasad Jain
11. Shri S. Kandappan
12. Shri Cherian J. Kappen
13. Shri L. D. Kotoki
14. Shri Lalit Sen
15. Shri Harekrushna Mahatab
16. Shri Jaswantraj Mehta
17. Shri Bibudhendra Misra

18. Shri Purushottamdas R. Patel
19. Shri T. A. Patil
20. Shri A. V. Raghavan
21. Shri Raghunath Singh
22. Chowdhry Ram Sewak
23. Shri Bhola Raut
24. Dr. L. M. Singhvi
25. Shri M. P. Swamy
26. Shri U. M. Trivedi
27. Shri Radhelal Vyas
28. Shri Balkrishna Wasnik
29. Shri Ram Sewak Yadav
30. Shri Asoke K. Sen

RAJYA SABHA

31. Shri Tarit Mohan Das Gupta
32. Shri Rohit Manushankar Dave
33. Shri Khandubhai K. Desai
34. Shri Nemi Chandra Kasliwal
35. Shri Dhirendra Chandra Mallik
36. Shri Joseph Mathen
37. Shri Nafisul Hassan
38. Shri P. Ramamurti
39. Sardar Raghbir Singh Panjhazari
40. Shri S. D. Patil
41. Shri Kota Punnaiah
42. Shri G. Rajagopalan
43. Thakur Bhanu Pratap Singh
44. Shri Atal Bihari Vajpayee
45. Shri J. Venkatappa.

DRAFTSMEN

1. Shri R. C. S. Sarkar, *Secretary, Legislative Department, Ministry of Law.*
2. Shri V. N. Bhatia, *Joint Secretary and Draftsman, Ministry of Law.*
3. Shri S. K. Maitra, *Deputy Draftsman, Ministry of Law.*

REPRESENTATIVES OF THE PLANNING COMMISSION

1. Shri Ameer Raza, *Joint Secretary, Planning Commission.*
2. Shri A. N. Seth, *Assistant Chief, Land Reforms Division, Planning Commission.*

SECRETARIAT

Shri A. L. Rai—*Deputy Secretary.*

## REPORT OF THE JOINT COMMITTEE

I, the Chairman of the Joint Committee to which the Bill* further to amend the Constitution of India was referred, having been authorised to submit the report on their behalf, present this **their report, with the Bill as amended by the Committee annexed** thereto.

2. The Bill was introduced in Lok Sabha on the 6th May, 1963. The motion for reference of the Bill to a Joint Committee of the Houses was moved in Lok Sabha by Shri Asoke K. Sen, Minister of Law, on the 18th September, 1963 and was discussed and adopted on the 19th September, 1963.

3. Rajya Sabha discussed and concurred in the said motion on the 21st September, 1963.

4. The message from Rajya Sabha was published in the Lok Sabha Bulletin, Part II, dated the 23rd September, 1963.

5. The Committee held 14 sittings in all.

6. The first sitting of the Committee was held on the 23rd September, 1963 to draw up their programme of work. The Committee at this sitting decided to hear oral evidence from interested bodies/associations etc. and to issue a Press Communique inviting memoranda for the purpose by the 5th October, 1963. As the Committee received a number of representations from some Members of Parliament and various parties pleading that the time for submission of memoranda on the Bill was very short, the Committee, at their second sitting held on the 11th October, 1963, decided to extend the time for submission of memoranda on the Bill upto the 15th November, 1963, and to issue a Press Communique to that effect.

At their ninth sitting, held on the 28th January, 1964, when the Committee considered the question whether nine additional State Acts might be added in clause 3 of the Bill, the Committee felt that **the public might be given an opportunity to submit their views to** the Committee on those nine State Acts also. Accordingly, another

*Published in the Gazette of India, Extraordinary, Part II, Section 2, dated the 6th May, 1963.

Press Communique was issued on the 28th January, 1964 inviting memoranda from the interested parties on those Acts by the 10th February, 1964.

7. The report of the Committee was to be presented by the last day of the first week of the Sixth Session. As the Committee felt that it would not be possible for them to complete their work by that time, they, at their fifth sitting held on the 13th November, 1963, decided to ask for an extension of time for presentation of their report upto the last day of the first week of the Seventh Session. Necessary motion was brought before the House and adopted on the 18th November, 1963.

As the Committee desired to hear oral evidence in respect of a proposal to include nine additional State Acts in clause 3 of the Bill, they, at their ninth sitting held on the 28th January, 1964, decided to ask for further extension of time upto the 31st March, 1964. Necessary motion was brought before the House and adopted on the 11th February, 1964.

8. 1,36,141* Memoranda/representations/resolutions on the Bill were received by the Committee from the various associations etc.

9. At their second, third, fourth, fifth, seventh and twelfth sittings held on the 11th and 12th October, 1963, 12th and 13th November, 1963, 23rd January, 1964 and 22nd February, 1964, respectively, the Committee heard the evidence given by the representatives of 13 associations etc. and one individual.

10. At their sixth sitting held on the 5th December, 1963, the Committee decided to hear further oral evidence and to consider the clauses of the Bill thereafter.

11. The Committee have decided that the evidence given before them should be laid on the Tables of both the Houses *in extenso.*

12. The Committee considered the Bill clause-by-clause at their eighth, ninth, tenth, eleventh and thirteenth sittings held on the **24th, 28th, 29th and 30th January, 1964 and 10th March, 1964, respectively.**

13. The Committee considered and adopted the report on the 17th March, 1964.

*Besides these, 68,427 representations were received before the Bill was referred to the Joint Committee.

14. The observations of the Committee with regard to the principal changes proposed in the Bill are detailed in the succeeding paragraphs.

15. *Clause* 2.—The Committee feel that where any law makes a provision for the acquisition by the State of any estate and where any land comprised therein is held by a person under his personal cultivation, it should not be lawful for the State to acquire any such land as is within the ceiling limit applicable to him under any law for the time being in force or any building or structure standing thereon or appurtenant thereto, unless the law relating to the acquisition of such land, building or structure provides for payment of compensation at a rate not less than the market value thereof.

For the purpose of achieving the object in view, clause (1) of Article 31A of the Constitution has been amended by inserting a further proviso therein.

The other amendment is of a drafting nature.

16. *Clause* 3.—(a) The Committee are of opinion that in view of the enlarged definition of the term 'estate' proposed in clause 2 of the Bill, many State enactments would get protection under Article 31A of the Constitution. The Committee, however, note that the main object in including several State enactments in the Ninth Schedule to the Constitution is to put them above litigation with a view to facilitating their expeditious implementation. Keeping this in view the Committee have carefully scrutinised the various Acts proposed to be included in the Ninth Schedule to the Constitution by clause 3 of the Bill as introduced.

The Committee were informed by the Government that a number of those Acts have already been fully or largely implemented without being challenged. Several others have already stood the test of challenge in courts. Some others do not raise any major controversial issue. The Committee are, therefore, of the view that it is not necessary to include all such Acts in the Ninth Schedule to the Constitution.

The Committee have accordingly deleted from this clause 88 Acts and 36 Acts only have been retained out of 124 Acts included in the Bill.

(b) Among the Acts included in clause 3, the Committee consider that section 28 of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (Bihar Act

XII of 1962), which permits acquisition of land under personal cultivation within the ceiling limits should not get the protection of Article 31B as the amount of compensation payable for such acquisition is not in accordance with the second proviso to clause (1) of Article 31A as inserted by clause 2 of the Bill.

The Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 has, therefore, been included in this clause with the exception of section 28 thereof.

The Committee further note that section 15A of the Rajasthan Tenancy Act, 1955 (Rajasthan Act III of 1955) has been struck down by the High Court of Rajasthan. Under section 15 of the Act, khatedari rights accrued to certain classes of tenants. Subsequently, the Act was amended with retrospective effect by inserting section 15A and other sections to provide that khatedari rights shall not be deemed to have accrued in any land in Rajasthan canal area and other specified areas. Section 15A had the effect of acquisition of Khatedari rights of certain tenants without payment of compensation. The Committee are of opinion that the second proviso to clause (1) of article 31A as inserted by clause 2 of the Bill should be attracted to such cases. The Committee, therefore, feel that the Rajasthan Tenancy Act, 1955 should not get unqualified protection under article 31B and they have, therefore, recommended the inclusion of the Rajasthan Tenancy Act of 1955 in the Ninth Schedule subject to the second proviso to clause (1) of article 31A of the Constitution as proposed in clause 2 of the Bill. To achieve this object, the Act has been included with an Explanation.

(c) In addition to the above Acts, the Committee have considered certain other land reform enactments which were not included in the Bill as introduced and are of opinion that eight such Acts should be included in the Ninth Schedule.

The Committee find that the Hyderabad Tenancy and Agricultural Lands Act, 1950 had been struck down by the Andhra Pradesh High Court on the ground that it had not been reserved for, and did not receive, the President's assent. The Committee also note that the Act was validated with retrospective effect by the Andhra Pradesh Government in respect of the Telangana area, by the Mysore Government in respect of the Karnatak area, and by the Maharashtra Government in respect of the Marathwada area.

The Committee are of the view that the three validating Acts should be specifically included in the Ninth Schedule to the Constitution to ensure protection of Article 31B to the Hyderabad Tenancy and Agricultural Lands Act, 1950.

The Committee have, accordingly, included the following Acts in the clause:—

(1) The Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands (Validation) Act, 1961 (Andhra Pradesh Act XXI of 1961).

(2) The Hyderabad Tenancy and Agricultural Lands (Re-enactment, Validation and Further Amendment) Act, 1961 (Maharashtra Act XLV of 1961).

(3) The Hyderabad Tenancy and Agricultural Lands (Validation) Act, 1961 (Mysore Act XXXVI of 1961).

(d) It was brought to the notice of the Committee that the State Governments of Gujarat, Kerala and Orissa had enacted three Acts relating to land reforms subsequent to the introduction of this Bill in Parliament, namely:—

(1) The Gujarat Surviving Alienations Abolition Act, 1963 (Gujarat Act XXXVIII of 1963).

(2) The Kerala Land Reforms Act, 1963 (Kerala Act 1 of 1964).

(3) The Orissa Merged Territories (Village Offices Abolition) Act, 1963 (Orissa Act X of 1963).

The Committee consider that in order to remove any doubt or uncertainty in regard to the validity of these enactments, they should be specifically included in the Ninth Schedule.

(e) It was represented to the Committee that (1) The Jenmikaram Payment (Abolition) Act, 1960 (Kerala Act III of 1961) and (2) the Kerala Land Tax Act, 1961 (Kerala Act XIII of 1961) should also be included in the Ninth Schedule as these Acts have been struck down by the Courts. The Committee feel that it is necessary to do so.

These Acts have, accordingly, been included in this clause.

(f) The Committee are of the opinion that as the Acts which should get the protection of article 31B have been specifically included in the Ninth Schedule, the existing Explanation to clause 3 of the Bill is redundant and has accordingly been omitted.

17. The Committee recommend that the Bill, as amended, be passed.

S. V. KRISHNAMOORTHY RAO,
*Chairman,*
*Joint Committee.*

NEW DELHI;
*The 17th March, 1964.*

## MINUTES OF DISSENT

### I

This is a Bill of a far-reaching character and it needs to be scrutinised very thoroughly in the interests of justice and fair-play. In view of the enlarged definition of the term "estate" proposed in clause 2 of the Bill, many State enactments would get automatic protection under article 31A of the Constitution. As such there is no need to put any more Acts in the Ninth Schedule. This will be in consonance with the spirit of the Constitution wherein we have guaranteed equal treatment to all citizens and also provided legal remedies by making their fundamental rights justiciable. In a democratic country like ours, the independence and prestige of the judiciary should be maintained at a high level and we should not deprive the citizens of their legal remedies to agitate their rights in a proper forum of law. It will be against all canons of jurisprudence to deprive any citizen of his legal right to move the courts particularly after 13 years of our Constitution. Any inroad on the legal remedies of a citizen would bring down the prestige and independence of our judiciary which is one of the strongest and important arms of our democracy. I, therefore, strongly urge that there should not be any addition to the Ninth Schedule which will result in undermining the prestige of the judiciary. Therefore, I oppose the inclusion and retention in the Ninth Schedule of the Constitution of 36 Acts out of 124 Acts included in the Bill. Moreover, some of the Acts were not at all before both Houses of Parliament when the Bill was first moved. It is also not safe to ask Parliament to pass all these 36 Acts which alone can stand the scrutiny of the competent judiciary.

NEW DELHI; S. D. PATIL.
*The 17th March*, 1964.

### II

This is a Bill of a far-reaching charcter and it needs to be scrutinised thoroughly. As many as more than 1,36,000 representations were received. This shows the interest created among agriculturists.

A proviso to article 31A is proposed by the Joint Committee to clear misunderstandings created that land under ceiling area also may be taken away without payment of market price. I feel that the purpose will be best served if after the word "acquisition", the words "or diminishing any right of a holder" are added in clause 2 of the Bill.

Our planners have suggested some exemptions from ceilings in paras 28, 29, 30 and 31 of Chapter XIV of the Third Five Year Plan. These suggestions are not followed by some States. Land Reform Policy should be uniform in the country and I am of opinion that if a suitable provision is inserted in article 31A i.e. clause 2 of the Bill, to exempt from ceilings lands under such plantations, States will be obliged to respect the uniform Land Reform Policy of the country.

In a democratic set up, particularly where written Constitutions have been adapted, courts are constituted as the custodians of fundamental rights. In one sense, our courts are laboratories in which the validity of legislative enactments and executive conduct are tested, and in another sense our courts have been constitutionally constructed as watch-towns in which judges act as the custodians of the citizen's fundamental rights and carry on an increasing vigil to see that the Legislatures do not transgress their legislative jurisdiction and function within legal bounds.

Some State Legislatures transgressed their jurisdiction and legal bounds in passing the enactments proposed to be included in the Ninth Schedule.

I feel this is unconstitutional.

NEW DELHI;
*The 23rd March, 1964.*

PURUSHOTTAMDAS R. PATEL

## III

यद्यपि धारा २ के भाग (i) में भूमि जोत-सीमा निर्धारिण के सम्बन्ध में संशोधन कर देने से उन लोगों को उचित संरक्षण प्राप्त हो गया है जिनकी भूमि जोत-सीमा तथा उससे कम रहती है किन्तु हमारी मान्यता है कि विधेयक के पृष्ठ २ पर धारा २ की उप-धारा (ग्र) के भाग (iii) में भी उपयुक्त संशोधन की आवश्यकता है। हमारे मतानुसार वर्तमान परिभाषा जो दी हुई है उससे यह स्पष्ट नहीं होता है कि इस भूमि का तथा मकान आदि के स्थानों का उपयोग खेतिहर व खेतिहर मजदूर अथवा दस्तकार को उनका मालिक बनाने के लिए ही होगा या खेती के ऐसे उपयोग के लिए होगा जो किसी प्रकार से बिचौलियों को अथवा सरकार को अपने कार्यों के लिए लाभ देने के लिए न होगा। अतः हमारा मत है कि भूमि-सम्पदा (ऐस्टेट) की

परिभाषा में परिवर्तन करने हेतु इस भाग (iii) के अन्त में ऐसे शब्द जोड़े जावें कि इसका उपयोग उपयुक्त श्रेणियों के लिए ही होगा अन्यथा डर है कि सरकार किसी समय भी जनहित के नाम पर इसका उपयोग किसी और काम के लिए भी कर सकती है। अतः हम इस प्रकार का संशोधन विधेयक के सदन में प्रस्तुत किये जाने के समय लायेंगे और इस हेतु यह विमत प्रगट किया गया है।

जहां तक संविधान के नवें परिच्छेद में ४४ अधिनियमों के समावेश का प्रश्न है हमारा मत है कि यह कार्यवाही नितान्त नीतिविहीन आधार पर की गयी है। प्रारम्भ में १२४ अधिनियमों की सूची देना फिर उनमें से ८८ को वापस ले लेना और इसके पश्चात् ९ नये अधिनियमों को जोड़ने की सूची देना और उनमें से ८ को जोड़ देना यह सब इस बात का प्रमाण है कि सब निर्णय बिना किसी नीति को अपनाये कर लिये गये है। जो प्रतिवेदन तैयार किया है उसमें यह उल्लेख है कि उन ८८ अधिनियमों को सरकार द्वारा वापस लेने का सुझाव मूलरूप से इसलिए दिया गया कि मुख्य रूप में भूमि-सम्पदा (ऐस्टेट) की परिभाषा विधेयक में बदल दिया जाने से उनके शामिल करने की आवश्यकता नहीं रह गयी है। किन्तु जो शामिल किये गये हैं उन पर दृष्टि डालने से यह प्रमाणित हो जाता है कि उनमें से अधिकतर उन ८८ अधिनियमों से मिलते जुलते हैं।

हमारे मत में नवें परिच्छेद में अधिनियमों को सम्मिलित केवल विशेष परिस्थितियों में और बिना कोई और उपाय बाकी रह जाने पर ही करना चाहिए। हमारा यह भी निश्चित मत है इसका मापदण्ड यह होना चाहिए कि जब सर्वोच्च न्यायालय के स्तर पर अधिनियम की चुनौती के निर्णय हो जाने पर और अधिनियम को आंशिक अथवा पूर्ण रूप में अवैधानिक घोषित किये जाने पर या तो राज्य सरकारें अपने आप को इस स्थिति में प्रमाणित करदें कि परिस्थिति ऐसी हो चुकी हो जिसमें संविधान के अनुरूप संशोधन विशेष कारण से सुलभ न हों और बहुत बड़ी संख्या के लोगों पर उसका विपरीत प्रभाव पड़ रहा हो अथवा उचित संशोधन लाने के लिए लम्बे समय की आवश्यकता प्रतीत हो और उतनी देरी होने में एक बड़ी संख्या के लोगों पर विपरीत असर पड़ने की संभावना हो।

इन ४४ अधिनियमों को शामिल करने में ऊपर वर्णित दोनों मापदण्ड कतई उपयोग में नहीं लाये गये। इसके विपरीत कहीं केवल न्यायालय में चुनौती हो जाने की आशंका के आधार पर, कहीं कानूनी त्रुटियों को छिपाने के लिए और कहीं अपने निर्णयों को किसी प्रकार भी कार्यान्वित कराने के लिए ये अधिकतर अधिनियम राज्य सरकारों द्वारा नवें परिच्छेद में सम्मिलित करने के लिए भेजे गये हैं और उनके आधारों को मान्यता देते हुए संयुक्त प्रवर समिति ने उनको सम्मिलित कर लिया है। इन अधिनियमों में अनेक ऐसे हैं जो भूमि सुधार कानूनों की सीमा लांघ कर अन्य प्रकार के मामलों को उनके अन्तर्गत लाये हुए हैं।

यदि हम उपयुक्त आधारों को स्पष्ट करने के लिए उदाहरण देना प्रारम्भ करें तो यह विमति टिप्पणी बहुत लम्बी हो जावेगी। अतः हमने निश्चय किया है कि विधेयक के सदन में उपस्थित होने पर उन अधिनियमों को परिच्छेद में से निकाल देने के लिय संशोधन लावेंगे और ऐसा करते समय उन सब पर उचित प्रकाश डालेंगे।

हमारी यह भी मान्यता है कि राज्य सरकारों की स्वयं की त्रुटियों को छिपाने के लिए इस प्रकार नवें परिच्छेद का उपयोग होना संविधान में इस परिच्छेद को स्थान देने की मंशा के विपरीत है और इससे राज्य सरकारों को संविधान के प्रति लापरवाही बरतने का प्रोत्साहन मिलता है। अनेक अधिनियम जो शामिल किये गये हैं, हमारी दृष्टि से उन पर यह बात लागू होती है।

अतः इन सब कारणों को सामने रखते हुए हमें यह विमति-टिप्पणी देने की आवश्यकता प्रतीत हुई है।

काशीराम गुप्त
रामसेवक यादव
लक्ष्मीमल्ल सिंघवी

नई दिल्ली;
२४ मार्च, १९६४

## IV

The Statement of Objects and Reasons accompanying the Bill introduced in Parliament specifically pointed out that the proposed Amendment had been necessitated by the judgement of the Supreme Court declaring certain vital provisions of the Kerala Agrarian Relations Act, 1960 *ultra vires* of the Constitution.

As is known most of the land reforms passed in various States have failed to confer real rights on the cultivator because of the numerous loopholes in those Acts. Unlike them, the Kerala Agrarian Relations Act was the one piece of land reforms legislation which sought to translate the declared objective of the Five Year Plan into reality and to confer substantial rights on the tillers of the land in Kerala.

Nonetheless the fact that this legislation conferred real rights on the people and seriously affected the position of the parasitic landowners was responsible for a violent movement by the vested interests to overthrow the Government of Kerala and ultimately the President dismissed the Government. The President, after more than a year, gave his assent to the Bill. The tenants of Kerala heaved a sigh of relief.

However, the Supreme Court judgement intervened. In these circumstances, those peasants were looking forward to the passage of this Bill and thinking that their hopes and aspirations would be fulfilled at long last.

In the interval, the present Kerala Government brought a new Land Reforms Bill, which takes away many of the substantial rights conferred by the Kerala Agrarian Relations Act, 1960 (Kerala Act IV of 1961). The Kerala Government run by the Congress Party had brought such a preposterous piece of legislation in consultation with and with the approval of the Central Government, when the Joint

Committee was considering the inclusion of the Kerala Agrarian Relations Act, 1960 (Kerala Act IV of 1961) in the Ninth Schedule.

Even before the Joint Committee had finished its consideration of the Bill the Congress Government of Kerala got the new Land Reforms Act passed in the State Legislature and the President gave his assent within a few days.

Thus once again the hopes and expectations of the peasants of Kerala had been frustrated.

Thus the very object for which this Bill had been brought forward has been otherwise frustrated. This only serves to expose the professed anxiety of the Government to carry out real land reforms.

We are therefore constrained to express dissent regarding the inclusion of the Kerala Land Reforms Act, 1963 in the Ninth Schedule. We hold the view that the Kerala Agrarian Relations Act of 1960 (Kerala Act IV of 1961) should continue to remain in the Bill and need not be replaced by the Land Reforms Act, 1963. Of course, it is our conviction that this country cannot progress or move towards the national goal of socialism without basic changes in the land system. When such major reforms are launched upon it is but natural that some fundamental right or other may be contravened largely because the right to hold property is a guaranteed right under our Constitution.

The cardinal features of a bold land reform also will remain unexpressed legislatively if such measures, basic to national progress are not immunised against attacks in courts on the score of violation of fundamental rights. We strongly plead for the inclusion in the Ninth Schedule of land reforms laws. But in the Kerala instance, the crucial question is not whether the agrarian law, bringing about extensive changes in existing ownership, should or should not be included in the Ninth Schedule: the point is whether we should continue in the Schedule the already existing enactment *i.e.*, the Kerala Agrarian Relations Act, 1960 in preference to the obnoxious measure which has been subsequently passed under pressure of landed interests in the State. In fact there is no moral justification for giving up the Agrarian Relations Act. It had received considerable debating attention in the Assembly and in the press. It underwent thorough scrutiny at the hands of the Joint Committee and many an amendment was made. The Central Government had given its approval through Presidential assent. The Planning Commission had also scanned and satisfied itself about the provisions. It is impossible to understand why a legislative obliteration of that measure should at all be ventured upon.

What is more important, a legion of tenants had approached the Tribunals and Courts for relief on the basis of that Act, and proceedings in large numbers have either been disposed of or are pending. Colossal sums of money have been spent by the tenantry and Tribunals have also spent lots of time on these petitions. The new Act takes away the right given to tenants of small land owners to purchase small land owners rights. About 24,000 petitions were filed in the various Tribunals of Kerala for purchase of these rights. In many purchase price was also deposited. These petitioners are not given any rights under the new Act. This is the way socialism is implemented in our country. The Congress Party as well as the Praja Socialist Party formed the coalition Government in Kerala in 1960. As a Government these two parties brought about quite a number of Amendments to the Kerala Agrarian Relations Act. Kerala Act IV of 1961 was thus passed. When all this has been done, the final product represents the views of the Communist Party which originally brought the Bill: the Congress and the P.S.P. which subsequently modified the Act: the Planning Commission and Central Government which had X-rayed the measures and approved them. Strongest reasons are necessary to give up that law and bring in another. We did not take this stand of ours only on the basis that there is no justification for repealing Kerala Act IV of 1961. We take the further stand that the Land Reforms Act recently passed by the Kerala Legislature and which is sought to be inserted in the Ninth Schedule is injurious to the agrarian community, *viz.* cultivating tenants and contradicts the principal features of agrarian reforms. Any sound land reform law must answer the following tests: (1) Does it produce substantial reduction of rents from their current levels so as to facilitate more rapid improvement in the economic conditions of tenants; (2) Does it transform tenants into owners of the land they till while putting an end to the vestiges of landlord-tenant relationship; (3) Does it invest the tenants, with absolute security of tenure and inhibit resumption of holdings; (4) Is there effective ceiling enforced in regard to agricultural holdings and is there a capable machinery for the utilisation of surplus land for the purpose of resettling ejected tenants and landless labourers; (5) Are there sufficient safeguards of preventing large landholders evading the law in the guise of gifts, transfers, partition etc.; (6) In the peculiar situation of demographic pressure is there provision of security of occupation of their homesteads for the landless labourers called *Kudikidappukars.*

Take for instance the chapter dealing with ceiling which provides for assumption and distribution of surplus land. Broadly speaking the various clauses of the Act defeat the very purpose of the chapter. The exclusion of plantations which are many in Kerala, of cashew

estates of 10 acres and above which are quite a few in the State, of pepper and areca gardens of 5 acres and above which are also numerous, of Kayal Padasekharams of Kuttanad area, which runs into several tens and thousands of acres kept in a few hands, of wakfs, private or public, etc. effectively defeat the object of providing for ceiling. The new definition of small holders and standard acres in the Kerala context gives a larger area to the owners. Agricultural companies which were included in the earlier law are kept out of the ceiling provisions in the new Land Reforms Act. Above all a general power, unguided we should say, has been taken by Government to exempt any land from the ceiling provisions "on account of any special use to which it may be put" or for converting it into plantations or for expansion of existing plantations. The concept of ceiling area has itself received an extended meaning; with the result that families and individuals can keep unlimited extents on the score of sub-families or on account of lineal descendants. It is purposeless to keep the chapter on ceilings in the law with these flood-gates for escape kept ajar.

Again it is the essential feature of land reform that there should be a reduction in the current levels of rent and never an increase. But the Kerala Land Reforms Act, 1963 provides for *unlimited* increase in the rent in a considerable number of cases. This is supported by the theory that justice must be done to all including landlords, also. It is idle to speak of evolving a socialistic pattern of society, if land reformers become extremely sensitive to the rights of landlords. Even the existing benefits of fair rent fixation available to the tenants of Malabar have been whittled down by the new Act. The Malabar Tenancy Act as it stood even a decade ago provided that where better yields were realised on account of the Government irrigation schemes such increase should not be included in arriving at fair rent in favour of the landlord, the idea being that the benefit must go to the peasant and the fair rent should be fixed on the basis of a yield fixed without reference to such irrigational facilities. Even this benefit has been taken away in the new law. Where the contract fixed money value for the commodity payable as rent the Agrarian Relations Act stipulated that it was enough that the tenant paid the money value so fixed in the document. But now the landlord gets a better deal and the tenant under the Land Reforms Act is called upon to pay at the new high price, the object being that the landlord must get the benefit of the fantastic increase in the price of commodities. This is not the route to socialism. We beg to submit that even clauses relating to eviction have become dangerously wide in the new Land Reforms Act in contrast to the Malabar Tenancy Act of long ago and of the Kerala Agrarian Relations Act,

1960. There are many situations under the new law where the landlord can just evict the tenant for mere desire to do so. The homeless poor labourers who live in places permitted by other big landholders were given protection against eviction under the Malabar Tenancy Act and later under the Agrarian Relations Act. But the present law (The Kerala Land Reforms Act, 1963) has considerably disturbed this immunity, and narrowed down the scope of the protection. In the name of temple and gods provision for eviction is made under the new law; for instance, there is a provision which enables eviction of land "when the same is needed for the purpose of extending the *place* of public religious worship". The danger lurking behind this clause is that most deities in Kerala during annual festival take a long itenerant course punctuated by worship *en route* and all these lands become liable to eviction now.

We can go into the subject more elaborately to substantiate our views that the present Land Reforms Act will be a big blow to the peasantry of Malabar. So we plead for the retention of The Kerala Agrarian Relations Act, 1960 in clause 3 of the Bill, and oppose the substitution thereof by the Kerala Land Reforms Act, 1963. There has been large number of cases where final orders have been passed under the Kerala Agrarian Relations Act, 1960. Even these are unsettled by the new law. In regard to compensation the new scales are so high that the tenants will not be able to take advantage of the clauses. In short the proposed substitution of the new Act for the old would result in the denial of the agrarian reform to the Kerala State. Haste is writ large in the various sections of the Act and we are sure various amendments will have to be brought in the Land Reforms Act when it starts working. All this can be avoided if our suggestions were accepted that the Kerala Agrarian Relations Act, 1960 will continue in the Ninth Schedule. We have dwelt at length on this because the Kerala Agrarian Relations Act, 1960 is the only one Act which has been substituted by a new Act after it has been referred to the Joint Committee.

We are also opposed to the deletion of the various Acts of the States which were included in the amending Bill referred to the Joint Committee. They were included by way of abundant caution, in order to protect them against possible attacks in the Supreme Court or the High Courts.

The argument that some of them which are being deleted, have been on the statute book for some years without being attacked in courts is no justification for their deletion, for there can be no guaran-

tee against such attacks on them in the courts, except their inclusion in the Ninth Schedule.

Subject to these reservations, we support the Bill as amended by the Joint Committee.

P. RAMAMURTI*
A. V. RAGHAVAN

NEW DELHI;
*The 24th March,* 1964.

V

I regret that in spite of several substantial alterations secured by us in the Bill as referred to the Joint Committee as a consequence of the deliberations of the Committee, I am unable to endorse the Bill in the form in which it is proposed to be reported to Parliament.

In the first place, I cannot help prefacing my minute of dissent with the general observation that the Bill as introduced in the two Houses of Parliament clearly demonstrated a casual, ill-considered, half-baked and unscientific approach; it suffered from inherent deficiencies and was so loosely formulated that it could not in good conscience be said that there was a consistent legislative or economic approach to the problems of land reforms in our country. These inherent deficiencies persist in the Bill even as it emerges through the Joint Committee, partly because of the insufficiency of the time at the disposal of the Committee and because of the pervasive lack of dependable data and sustained analysis of the economic and legislative problems in the field of land reforms. It seems to me that uninformed economic orthodoxy and fixity of certain stock ideas have got entrenched in the governmental thinking in our country and that this constitutional amendment is intended more as a homage to these grooves of thinking, dominating our land policies rather than as an attempt at providing a rational and comprehensive answer to the problems which beset our country in this field.

We cannot look with equanimity upon the demonstrably casual and cavalierly approach adopted by the Government in introducing the Bill which contained as many as 124 enactments, many of which had no relation whatever to the programme of land reform. Within a few months there was a far-reaching change in the Government's position, when the Law Minister informed the Committee that on a reconsideration the Government felt that it would not be necessary

*Certificate required under Direction 87 of the 'Directions by the Speaker under the Rules of Procedure of Lok Sabha' not received.

to include 88 out of these 124 enactments in the Ninth Schedule. The Bill as introduced in the Parliament thus did not exemplify adequate sense of responsibility on the part of the Government. It is evident that the Government indiscriminately included all and sundry enactments in the entourage of the Ninth Schedule, showing shockingly insufficient regard for the Constitution and unfolding an insensitive casualness of approach in seeking constitutional protection for certain enactments which supposedly stood in the way of the implementation of the programme for land reforms.

In this context, in my opinion it is necessary for us to harken to the stage of Constitution-making. Dr. K. M. Munshi, a member of the Constitution Drafting Committee, sought to provide in a separate article two limitations on the States' rights to expropriate private property, namely, that expropriation would be permitted for public reasons only, and in return for just and adequate consideration to be determined according to conditions laid down by law. A divergent draft article was proposed by Shri K. T. Shah who sought to emphasise the State's right to acquire any private property and prohibited recognition of private ownership in certain industries and in various forms of natural wealth. The Sub-Committee which dealt with this provision felt persuaded to proceed on the basis of Section 299 of the Government of India Act, 1935. The Sub-Committee formulated a proposal which appeared as Clause 27 in its Report, and which was as follows:—

> No property, movable or immovable, of any person or corporation, including any interest in any commercial or industrial undertaking, shall be taken or acquired for public use unless the law provides for the payment of just compensation for the property taken or acquired and specifies the principles on which and the manner in which the compensation is to be determined.

At the stage of discussion, a point of view was expressed that the Article as drafted by the Sub-Committee may stand in the way of beneficient social legislation and in this connection the example of the Fifth Amendment of the U.S. Constitution was cited. Further, it was suggested that a new clause permitting curtailment by law of property rights whenever the contingencies of the common good so required be inserted. The Sub-Committee, however, did not accept this view. When this due processed provision relating to the right of property came up before the Advisory Committee, it encountered considerable opposition. In particular, Pandit G. B. Pant expressed the apprehension that the U.P. legislation for the abolition of Zamindari may run into difficulty if the clause were adopted. When the

provision came up for discussion in the Constituent Assembly, Sardar Vallabhbhai Patel observed that it was wrong to assume that the object of the clause was to provide for the acquisition of Zamindaris, because he thought that by the time the clause became law most of the Zamindaris would have already been liquidated. The expectation of such expeditious abolition of Zamindaris and such prompt implementation of land reform measures was, however, to be belied in due course.

The clause was further revised before it came to be incorporated as Article 24 in the Draft Constitution. However, Article 24 of the Draft Constitution was never brought for consideration before the Constituent Assembly. There were sharp differences of opinion on this matter in the Assembly. As was later recalled in the Constituent Assembly itself, the issue gave rise to so bitter a controversy that at one time it looked as if the differences would "even break up the whole Constitution" and cause "our ship to founder on the rocks" (Constituent Assembly Debates, Volume 11, Pages 662, 666). Perhaps the bewildering cleavage of opinions on the clause led the Chairman of the Drafting Committee at one stage to suggest the omission of the Article from the body of the Constitution. He suggested that instead of the Article, clause xxxi of Section 51 of the Australian Constitution may be incorporated as an entry in the legislative list.

Clause xxxi of Section 51 of the Australian Constitution reads:

> "The acquisition of property on just terms from any State or person in respect of which Parliament has power to make laws"

Similarly Shri C. Rajagopalachari is also believed to have expressed his preference for not including this article as a fundamental right if it were to follow the ingredients of the analogous provision in the Government of India Act. He felt that if the clause covered all cases of acquisition, the question of just compensation would inevitably be taken to the Courts in every case, with the result that Government functioning would be paralysed. At a later stage, Pandit Pant suggested the inclusion in the article of two new clauses, (i) to provide that the payment of compensation might be in cash or in securities or bonds or partly in cash and partly in securities, and (ii) to ensure that no law providing for the acquisition or taking possession of property would be called in question in any court. This was generally considered to be somewhat sweeping.

The article which finally emerged through the welter of conflicting opinions was essentially a compromise, a "just compromise" as

Dr. K. M. Munshi put it in the course of his speech winding up the debate. Dr. Munshi and Mr. Alladi Krishnaswami Aiyar strenuously defended the provision of judicial review in respect of the quantum of compensation. Mr. Aiyar elucidated the accepted legal position in this regard in the following words:—

> "The court is not to regard itself as a super Legislature and sit in judgment over the act of the Legislature as a Court of Appeal or review.....The province of the Court is normally to administer the law as enacted by the Legislature within the limits of its power. Of course, if the legislation is a colourable device, a contrivance to outstep the limits of the legislative power, or to use the language of private law, is a fraudulent exercise of the power, the Court may pronounce the legislation to be invalid or *ultra vires*....The Court will have to proceed on the footing that the legislation is *intra vires*. A Constitutional Statute cannot be considered as if it were a municipal enactment and the Legislature is entitled to enact any legislation in the plenitude of the power confided to it" (Constituent Assembly Debates, Vol. IX, Pp. 1272—74)."

Pandit Jawaharlal Nehru who moved for the consideration of the finally amended draft article felt that it would balance seemingly conflicting considerations of individual's right to property and the community's interest in that property. According to Pandit Nehru, three broad propositions were implied by the article, namely, (i) that there would be no expropriation without compensation; (ii) that a distinction had to be made between "petty acquisitions" and large schemes of social reform and social engineering; and (iii) that the balancing authority ultimately could only be the Legislature which had to keep before it all the relevant factors. He felt that so far as the question of compensation was concerned, the judiciary did not come into the picture unless there had been a gross abuse of the law or a fraud on the Constitution. (*See* Constituent Assembly Debates Vol. IX). The foregoing analysis of the *traveux preparatoire* of our Constitution shows that there is no justification for the Union Law Minister's claim that no new principle is now being sought to be introduced through the Bill or that the Bill was necessitated because of certain unforeseen and unanticipated difficulties. The fact that several of these enactments pertaining to land reform were challenged successfully in courts of law demonstrates that the various State Governments paid scant regard to reason, equity and Constitutional propriety. It is not that the Courts have failed to apply or observe

the principles of Constitutional interpretation referred to by Mr. Alladi Krishnaswami Aiyar in considering the validity of land reform enactments, but that there has been persistent transgression of fundamental rights enshrined in the Constitution and heedless violation of the dictates of reason by ill-considered legislation. It is a travesty of truth to allege that the land reform programmes cannot make any headway in a duly constituted manner under a regime of valid laws and that it is imperative to resort to the extraordinary expedient of protecting the whole body of legislative measures *en masse* by means of a retrospectively operative constitutional amendment. Thus every piece of legislation which was struck down yesterday by courts of law rises by the fiat of this Constitutional amendment to the dignity of valid and enforceable legislation today. To cite the most manifest miscarriage of reason and justice, a definition of "family" which was pronounced as arbitrary and unreasonable by the Supreme Court will be enthroned by the magic of this amendment.

In securing such blanket protection for the entire body of land legislation in this country, the Government have shown a rare and unprecedented disregard for Constitutional principles.

A Constitution of a country is the sheetanchor of organic and fundamental principles. The laws of the land have to be tested at its anvil. What is being attempted through this Constitutional amendment is to bend the Constitution to conform to certain legislative enactments.

In my opinion, it is highly improper to bring into existence a catalogue of pretected legislation the propriety or soundness of which we can scarcely vouchsafe. The Ninth Schedule is a monument of ineptitude and lack of self-confidence as it is a confession of the failure of the Government to define "estate", in an adequate and expressive manner, so as to obviate the need of appending a halting and hesitating inventory of enactments

I have no hesitation in agreeing that the principle of ceilings as such does not offend against fundamental rights, social justice and public policy. But there is no warrant for spreading the umbrella of Constitutional protection over ceiling legislation which is neither good law nor sound economics. This is evidently so in respect of many of the enactments sought to be protected and against which memorialists and witnesses before the Committee made out a really persuasive case.

Much less is there any rationale in protecting tenancy and revenue legislation as a whole or legislation which has not been challenged in

any court of law and particularly when even the nature of such apprehended future challenge is not known. In this Constitutional amendment, legislative irrelevance and lack of specific objects seem to have reached a high watermark, characterising this as a piece of predatory legislation.

It is not possible comprehensively to consider the desirability of this Constitutional amendment on the yardstick of economic and agronomic considerations because of the absence of reliable data. It is nevertheless possible to infer that the enactments which are sought to be protected are not likely to check fragmentation of holdings and promote scientific, progressive and growing agriculture committed to increasing productivity. The social revolution about which the architects of our land reforms vexed eloquent has yet to materialise; the problems of the landless and the small land-holders are still staring us in the face; our agriculture continues to suffer from conditions of stagnation, marked by surplus man-power and chronic under-employment; our yield per acre has been obstinately low. The tabulated figures in the recent Census of land holdings and cultivation and various studies on the subject convincingly substantiate these propositions and leave us no option but to conclude that there is something fundamentally lacking in the land reform programme of our country and that land reform measures require a radical reorientation and far-reaching fundamental thinking.

In certain specific matters, I have associated myself with two other colleagues and have, therefore, refrained from repeating the points of dissent dealt with therein.

L. M. SINGHVI.

NEW DELHI;
*The 24th March*, 1964.

**Bill No. 26-B of 1963**

# THE CONSTITUTION (SEVENTEENTH AMENDMENT) BILL, 1963

[AS REPORTED BY THE JOINT COMMITTEE]

*(Words side-lined or underlined indicate the amendments suggested by the Committee; asterisks indicate omissions.)*

A

BILL

*further to amend the Constitution of India.*

BE it enacted by Parliament in the Fifteenth Year of the Republic of India as follows:—

Short title.

1. This Act may be called the Constitution (Seventeenth Amendment) Act, 1964.

Amendment of article 31A.

2. In article 31A of the Constitution,—

(*i*) in clause (1), after the existing proviso, the following proviso shall be inserted, namely:—

"Provided further that where any law makes any provision for the acquisition by the State of any estate and where any land comprised therein is held by a person under his personal cultivation, it shall not be lawful for the State to acquire any portion of such land as is within the ceiling limit applicable to him under any law for the time being in force or any building or structure standing thereon or appurtenant thereto unless the law relating to the acquisition of such land, building or structure, provides for payment of compensation at a rate which shall not be less than the market value thereof.";

(*ii*) in clause (2), for sub-clause (*a*), the following sub-clause shall be substituted and shall be deemed always to have been substituted, namely:—

'(*a*) the expression "estate" shall, in relation to any local area, have the same meaning as that expression or its local equivalent has in the existing law relating to land tenures in force in that area and shall also include—

(*i*) any *jagir*, *inam* or *muafi* or other similar grant and in the States of Madras and Kerala, any *janmam* right;

(*ii*) any land held under ryotwari settlement;

(*iii*) any land held or let for purposes of agriculture or for purposes ancillary thereto, including waste land, forest land, land for pasture or sites of buildings and other structures occupied by cultivators of land, agricultural labourers and village artisans;'.

Amendment of Ninth Schedule.

3. In the Ninth Schedule to the Constitution, after entry 20, the following entries shall be added, namely:—

"* * * *

21. The Andhra Pradesh Ceiling on Agricultural Holdings Act, 1961 (Andhra Pradesh Act X of 1961).

22. Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands (Validation) Act, 1961 (Andhra Pradesh Act XXI of 1961).

23. The Andhra Pradesh (Telangana Area) Ijara and Kowli Land Cancellation of Irregular Pattas and Abolition of Concessional Assessment Act, 1961 (Andhra Pradesh Act XXXVI of 1961).

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24. The Assam State Acquisition of Lands Belonging to Religious or Charitable Institution of Public Nature Act, 1959 (Assam Act IX of 1961).

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25. The Bihar Land Reforms (Amendment) Act, 1953 (Bihar Act XX of 1954).

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26. The Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (Bihar Act XII of 1962), (except section 28 of this Act).

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27. The Bombay Taluqdari Tenure Abolition (Amendment) Act, 1954 (Bombay Act I of 1955).

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28. The Bombay Taluqdari Tenure Abolition (Amendment) Act, 1957 (Bombay Act XVIII of 1958).

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29. The Bombay Inams (Kutch Area) Abolition Act, 1958 (Bombay Act XCVIII of 1958).

* * * *

30. The Bombay Tenancy and Agricultural Lands (Gujarat Amendment) Act, 1960 (Gujarat Act XVI of 1960).

31. The Gujarat Agricultural Lands Ceiling Act, 1960 (Gujarat Act XXVII of 1961).

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32. The Sagbara and Mehwassi Estates (Proprietary Rights Abolition, etc.) Regulation, 1962 (Gujarat Regulation I of 1962).

33. The Gujarat Surviving Alienations Abolition Act, 1963 (Gujarat Act XXXIII of 1963).

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34. The Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 (Maharashtra Act XXVII of 1961).

35. The Hyderabad Tenancy and Agricultural Lands (Re-enactment, Validation and Further Amendment) Act, 1961 (Maharashtra Act XLV of 1961).

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36. The Hyderabad Tenancy and Agricultural Lands Act, 1950 (Hyderabad Act XXI of 1950).

37. The Jenmikaram Payment (Abolition) Act, 1960 (Kerala Act III of 1961).

38. The Kerala Land Tax Act, 1961 (Kerala Act XIII of 1961).

39. The Kerala Land Reforms Act, 1963 (Kerala Act I of 1964).

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40. The Madhya Pradesh Land Revenue Code, 1959 (Madhya Pradesh Act XX of 1959).

41. The Madhya Pradesh Ceiling on Agricultural Holdings Act, 1960 (Madhya Pradesh Act XX of 1960).

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42. The Madras Cultivating Tenants Protection Act, 1955 (Madras Act XXV of 1955).

43. The Madras Cultivating Tenants (Payment of Fair Rent) Act, 1956 (Madras Act XXIV of 1956).

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44. The Madras Occupants of Kudiyiruppu (Protection from Eviction) Act, 1961 (Madras Act XXXVIII of 1961).

45. The Madras Public Trusts (Regulation of Administration of Agricultural Lands) Act, 1961 (Madras Act LVII of 1961).

46. The Madras Land Reforms (Fixation of Ceiling on Land) Act, 1961 (Madras Act LVIII of 1961).

47. The Mysore Tenancy Act, 1952 (Mysore Act XIII of 1952).

* * * *

48. The Coorg Tenants Act, 1957 (Mysore Act XIV of 1957).

49. The Mysore Village Offices Abolition Act, 1961 (Mysore Act XIV of 1961).

50. The Hyderabad Tenancy and Agricultural Lands (Validation) Act, 1961 (Mysore Act XXXVI of 1961).

51. The Mysore Land Reforms Act, 1961 (Mysore Act X of 1962).

52. The Orissa Land Reforms Act, 1960 (Orissa Act XVI of 1960).

53. The Orissa Merged Territories (Village Offices Abolition) Act, 1963 (Orissa Act X of 1963).

54. The Punjab Security of Land Tenures Act, 1953 (Punjab Act X of 1953).

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55. The Rajasthan Tenancy Act, 1955 (Rajasthan Act III of 1955).

56. The Rajasthan Zamindari and Biswedari Abolition Act, 1959 (Rajasthan Act VIII of 1959).

* * * *

57. The Kumaun and Uttarakhand Zamindari Abolition and Land Reforms Act, 1960 (Uttar Pradesh Act XVII of 1960).

58. The Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 (Uttar Pradesh Act I of 1961).

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59. The West Bengal Estates Acquisition Act, 1953 (West Bengal Act I of 1954).

60. The West Bengal Land Reforms Act, 1955 (West Bengal Act X of 1956).

61. The Delhi Land Reforms Act, 1954 (Delhi Act VIII of 1954).

62. The Delhi Land Holdings (Ceiling) Act, 1960 (Central Act 24 of 1960).

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63. The Manipur Land Revenue and Land Reforms Act, 1960 (Central Act 33 of 1960).

64. The Tripura Land Revenue and Land Reforms Act, 1960 (Central Act 43 of 1960).

*Explanation.*—Any acquisition made under the Rajasthan Tenancy Act, 1955 (Rajasthan Act III of 1955), in contravention of the second proviso to clause (1) of article 31A shall, to the extent of the contravention, be void.".

M. N. KAUL,
*Secretary.*

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